



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 19, 2022

IN THE MATTER OF:

Appeal Board No. 623414

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective November 15, 2021, on the basis that the claimant was not available for employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 4, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked as a digital marketing associate for six years until November 12, 2021. She worked full time, 40 hours per week.

The claimant began working from home in March 2020 with the onset of the COVID-19 pandemic. She gave birth on November 13, 2020. After taking maternity leave, she resumed working from home on February 8, 2021.

In July 2021, the employer directed the claimant to return to the office on a hybrid schedule. The claimant was able to return to the office at that time

because her husband was available to care for the baby. Her husband was set to return to his job as a teacher in September. The claimant looked into daycare centers, none of which had openings, but some of which accepted the claimant's baby onto a waitlist.

The claimant proposed four different hybrid schedules that would involve less office time than the employer was requiring. The claimant's supervisor was willing to accept any of these options, but upper management was not. The claimant was informed that she would need to be in the office Monday, Tuesday and Wednesday from 9:00 AM to 5:00 PM, and work from home on Thursday and Friday from 9:00 AM to 5:00 PM. The claimant's mother was available to watch the baby on Monday, Tuesday and Wednesday from 10:00 AM to 3:00 PM, but not from 9:00 AM to 5:00 PM. Unable to reconcile her work schedule and childcare needs, the claimant quit. The claimant then sought similar employment working from home, especially with employers that allowed a flexible work schedule. She could work full time, and her mother continued to be available to care for the baby on Mondays, Tuesdays and Wednesdays from 10:00 AM to 3:00 PM.

OPINION: The credible evidence establishes that, after the claimant quit her job in November 2021 due to a lack of adequate childcare, the claimant sought new employment that would allow her to work from home part of the week. To be eligible for unemployment insurance benefits, the claimant was required to be ready, willing and able to work in her usual employment or in any other field for which she was reasonably fitted by training and experience (see *Matter of Juneau*, 150 AD3d 1525 [3d Dept 2017]). While it is well-settled that a claimant who unreasonably restricts her search for new employment, such as by seeking only remote work, may be held unavailable for work (see *Appeal Board No. 622529*), that is not the case here. The claimant worked for her employer on a hybrid schedule for almost a year and a half and was looking for similar work after she resigned. The record fails to establish that the Department of Labor ever counseled the claimant regarding what she needed to do to establish and maintain her eligibility for benefits under these circumstances. Without such counseling, we do not hold the claimant responsible for failing to satisfy a standard of which she was not informed (see *Appeal Board No. 542373*). The claimant cannot be held ineligible on the basis that she was unavailable for employment (see *Appeal Board No. 573710*). Accordingly, we conclude that the claimant was not unavailable for work, and the claimant is eligible for benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, holding the claimant ineligible to receive benefits, effective November 15, 2021, on the basis that the claimant was not available for employment, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER